

268 LAW NOTE: JURISDICTION — § 939.03

Section 939.03 defines the scope of the state's territorial jurisdiction over crime. State v. Randle, 2002 WI App 116, ¶12, 252 Wis.2d 743, 647 N.W.2d 324.

“Territorial jurisdiction is an issue for the jury if it involves unresolved factual disputes; however, whether Wisconsin has jurisdiction under the law for a crime based on an undisputed set of facts is an issue of law for the circuit court.” State v. Anderson, 2005 WI 54, at footnote 5, 280 Wis.2d 104, 695 N.W.2d 731. [Citing State v. Brown, 2003 WI App 34, ¶¶25-27, 260 Wis.2d 125, 659 N.W.2d 110.]¹

The decision in Anderson is consistent with the conclusions reflected in the previously published version of this Law Note:

The Committee concluded that if the jurisdiction issue depends upon contested issues of fact, those issues are for the jury to determine, using the beyond a reasonable doubt standard. If the charging document does not properly allege that the crime was committed within the territorial jurisdiction of the state of Wisconsin, the trial court should grant a motion to dismiss. If there is a dispute about jurisdiction that presents a purely legal question, that is, whether the law confers jurisdiction over an undisputed factual situation, that question should be decided by the court. But if the charging document sufficiently alleges facts in support of jurisdiction and there is a dispute about those facts, the issue will be for the jury to decide.

Where jurisdiction is submitted to the jury, the Committee concluded that it can usually be accomplished under the standard verdict instructions which include the statement: “. . . as charged in the (information) (complaint).” See Wis JI-Criminal 480-494.

In cases involving the special circumstances addressed by § 939.03 – where some acts are committed outside the state – an instruction on venue as suggested in Wis JI-Criminal 267 ought to be sufficient to cover the territorial jurisdiction issue as well.²

One of those special circumstances is identified in § 939.03(1)(a), which requires that one of the constituent elements of an offense “takes place” in Wisconsin. The mental element of first degree intentional homicide is a constituent element under this statute and is shown to “take place” “upon proof that the defendant committed an act in Wisconsin manifesting an intent to kill.” State v. Anderson, *supra*, 2005 WI 54, ¶3.

COMMENT

Wis JI-Criminal 268 was originally published in 1990. The comment was updated in 1998 and 2005. This revision was approved by the Committee in June 2021; it added to the comment.

Before 2002, there was no direct case law authority in Wisconsin indicating that the issue of territorial jurisdiction is, like venue, a question for the jury and, if so, what the burden of persuasion is. That lack of authority has been partially addressed by the cases cited in the text above. Wisconsin's approach is consistent with what appears to be the majority rule – that the territorial jurisdiction issue is for the jury. For example, the Model Penal Code treats venue and jurisdiction as elements that must be proved beyond a reasonable doubt. §§ 1.12 and 1.13(a), Model Penal Code and Commentaries, American Law Institute (1985).

The Wisconsin court of appeals has held that “a crime involving a failure to act is committed at the place where the act is required to be performed.” State v. Gantt, 201 Wis.2d 206, 548 N.W.2d 134 (Ct. App. 1996). The Gantt decision upheld the Wisconsin conviction for failure to pay child support where the order was entered in Wisconsin but both the parent and the child resided out of state.

Relying in part on Gantt, the Wisconsin court of appeals concluded that under § 939.03(1)(c), a Wisconsin circuit court had territorial jurisdiction over a registrant whose § 301.45(6) violation occurred exclusively in another state. See State v. Triebold, 2021 WI App 13, 396 Wis.2d 176, 955 N.W.2d 415. The Triebold decision affirmed the defendant's Wisconsin conviction under § 301.45(6) for failing to update his address with Wisconsin authorities after he moved from one residence in Minnesota to another.

1. Also see State v. Bratrud, 204 Wis.2d 445, 448-49, 555 N.W.2d 669 (Ct. App. 1996): “When the location of the 2 acts which form the basis for a criminal charge is in dispute and the information pleads that the acts occurred in the State of Wisconsin, subject matter jurisdiction depends upon a question of fact, to be determined by the jury or, in the case of a plea, by the trial court.” Note that Bratrud involved a guilty plea, not a case where the jurisdiction issue was contested in the trial court. The court of appeals held that the jurisdiction issue was waived because the information to which the plea was entered alleged that the crime was committed in Wisconsin.

2. This conclusion was noted in State v. Brown, 2003 WI App 34, ¶10 and footnote 10, 260 Wis.2d 125, 659 N.W.2d 110, but was not relied on because the court found that an instruction was not required in that case. Note that the provisions of § 939.03 Jurisdiction of state over crime, are not an exact match for those relating to venue in § 971.19 Place of trial. That is, it appears that § 939.03 may establish jurisdiction in situations where § 971.19 may not establish venue.